IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.121 of 2002.

Judgment Reserved on: 07.11.2007.

Date of decision: 15.11.2007.

K.C. Sharma & Another **….Petitioners.**

Versus

Vijay Kant Sharma **….Respondent.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioners: **Mr.Suneet Goel, Advocate.**

For the Respondent: **Mr.Bhupender Gupta, Senior Advocate with Mr.Neeraj Gupta, Advocate.**

Dev Darshan Sud,J.

This is the defendant's revision against the order passed by the learned District Judge, Solan, in Civil Miscellaneous Application No.323 of 2001 on 14.1.2002. The respondent was the plaintiff before the learned trial Court who instituted a suit for permanent prohibitory injunction against appellants-defendants restraining them from obstructing the passage of waste water from the house of the plaintiff into the open drain of the Municipal Committee. The learned trial Court dismissed the suit. An appeal was preferred by the

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

respondent-plaintiff before the learned District Judge and during the pendency of the appeal an application under Order 23 Rule 1 of the Code of Civil Procedure was moved by him in which a prayer was made that he be granted permission to withdraw the suit as the khasra number in which the drain was situated had not been mentioned and that the Municipal Committee was a necessary party to the suit. The application was considered and allowed by the learned appellate Court. The defendant has now appealed.

Before considering the niceties of law urged in support of the revision, it would be trite to observe that in a suit for injunction the plaintiff would have a continuous cause of action and every successive obstruction or infringement of the right of the plaintiff would give a fresh cause of action. The point now made out before this Court is that the application filed by the plaintiff did not satisfy the mandatory requirement of Order 23 Rule 1 of the Code of Civil Procedure, need not detain this Court any further. True that in ***K.S. Bhoopathy and Others*** *vs.* ***Kokila and Others, (2005) 5 SCC 458,*** the Hon'ble Supreme Court has held that such permission cannot be granted as a matter of routine and that recourse to such provisions cannot be made where claim of the plaintiff is weak and has already suffered a decree against him. This precedent is clearly distinguishable in the facts of the present case as in a suit for injunction, every infringement of the right

would constitute a fresh cause of action. In these circumstances, it is not necessary for me to go into the entirety of the facts.

This revision is accordingly dismissed. There shall be no order as to costs.

November 15, 2007
(aks)

(Dev Darshan Sud)
Judge.